



Kaw Nation

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

Before the Federal Communications Commission Washington, D.C. 20554

In the Matter of

)
)

Revising the Historic Preservation Review Process)
for Wireless Facility Deployments)

WT Docket No. 17-79

NOTICE OF PROPOSED RULEMAKING AND NOTICE OF INQUIRY

Ex Parte COMMENTS OF: Kaw Nation

The Kaw Nation

The Kaw Nation is located in North Central Oklahoma with its seat of government located in Kaw City. The Kaw Nation works with a variety of federal agencies on small and large projects in the compliance of federal laws, including but not limited to the National Historic Preservation Act (NHPA), the Native American Graves Protection and Repatriation Act (NAGPRA), Archaeological Resources Protection Act of 1979 (ARPA), and National Environmental Policy Act (NEPA). The Nation is active in protecting irreplaceable sites and locations that are of religious and cultural significance to its people by continuing the successful collaborative processes that have been established with federal agencies, other Indian tribes, and project developers.

The Federal Communications Commission's Tower Construction Notification System (TCNS) system has proven to be a very useful tool to track and monitor, the placement of cellular technology infrastructure. Over the past year, we have worked with, and developed quality relationships with, the many consultants installing telecommunication infrastructure facilities, including cell tower siting, through the TCNS Program.

General Comments:

1) Section 106 provides an important process for protecting native heritage and cultural sites.

Wireless infrastructure is critical to connecting our communities and providing valuable tools for economic prosperity. While we support a continued deployment of the wireless technologies that will provide all people with this access to information, the Kaw Nation recognizes Section 106 as the only way to protect culturally sensitive areas from disturbance and destruction by outside parties, and makes clear that only when the Section 106 process is properly followed by all parties, does it work to protect Tribal sacred sites. Section 106 is an essential tool for tribal nations and needs to be protected.

2) There is a need for direct collaboration between the tribes and the wireless industry, including but not limited to major carriers and their associations.

The Kaw Nation encourages the FCC to promote direct relationships between tribes and wireless providers. The benefit of a congress between tribes, carriers and other industry representatives cannot be overstated. Providing these direct line engagement opportunities not only supports tribal sovereignty and the notion of nation to nation collaboration, it empowers both tribes and carriers/ industry representatives to resolve problems in a more expedited manner by eliminating the need for a third party go between.

The Kaw Nation requests FCC assistance in the brokering of introductions and facilitation of meetings with carriers and any associations that may represent those industries involved in

deploying wireless technologies. The FCC provided such an introduction for the Kaw Nation with AT&T and has benefited from an open dialogue with them. The Kaw Nation sees the establishment of strong ties with carriers, et al, as an effective management solution to alleviating many of the concerns raised regarding the timely processing of TCNS applications and subsequent approvals. This direct line of engagement will reduce processing times while maintaining the Historic and Cultural preservation rules that are vital to protecting tribal heritage and sovereignty.

3) Ground disturbance is a major driver in the siting and permitting reviews for wireless infrastructure.

The Kaw Nation recognizes the benefits of increased wireless coverage for all people across the U.S. and welcomes the deployment of such technologies. However, when there is a potential of ground disturbance for that deployment, it must be incumbent upon the carriers/ 3rd party vendors employed for said deployment to ensure that tribes are consulted prior to that ground disturbance.

Ground disturbance would include any excavation required for the removal and replacement of existing infrastructure. This is important because many existing tower sites pre-date the section 106 process and never went through historical preservation review. It would also include any disturbance by large equipment that would occur on already established roadways. A tower site may not disturb historic or cultural sites, but the path to the site, if not an already established road, could damage such sites. This is an important reason for the historic preservation review process.

4) Predictability is beneficial for all parties, but that predictability needs to be built upon compromise and dialogue that considers the perspectives of all parties.

The Kaw Nation recognizes the benefit of predictability in project planning, especially with large scale deployments like wireless infrastructure. Prescriptive fees would help carriers plan their deployment budgets and the Kaw Nation understands that moving targets for fees and players makes implementation more difficult. However, creating predictability for carriers must also include a roadmap for ensuring that tribes are still able to review Section 106 submissions and protect our heritage sites.

5) Many instances of incomplete submissions.

There have been several claims that Section 106, and tribal reviews in particular, cause unnecessary delays in wireless tech deployment. The Kaw Nation wishes to note for the record that there are many times when our TCNS administrator has received incomplete submissions which leads to delayed approvals. Examples of incomplete or problematic submissions include: tower siting miles apart that are included in the same siting package, locations are inaccurately mapped, or not mapped at all, tower specifications are omitted. Without a complete submission packet, it is impossible for the tribe to approve the submissions.

Before the FCC considers changing Section 106, a group of representatives from tribes, carriers and the FCC should convene to discuss reasonable options to addressing submission errors and remediation channels.

6) Fees help ensure tribal ability to process applications in a timely manner.

Fees associated with TCNS review help to ensure a timely review of submissions. Instead of eliminating the fees and placing the financial burden of Section 106 compliance on tribes, the Kaw Nation recommends developing a fee structure that is reasonable for review of submissions while not being over burdensome on carriers. Again, the Kaw Nation would request that a high-level committee akin to the National Programmatic Review be convened in order for these issues to be resolved by representatives for the multiple stakeholders involved.

Kenny Wheeler
TCNS Administrator
Kaw Nation

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